



Region Seven  
Montana Fish, Wildlife & Parks  
352 I-94 Business Loop  
Miles City, MT 59301

February 8, 2016

## **Record of Decision**

### **NAVRATIL CHANNEL MIGRATION EASEMENT (Richland County) DRAFT ENVIRONMENTAL ASSESSMENT**

#### **Proposed Action**

To approve the use of Western Area Power Administration (WAPA) funds allocated to Montana Fish, Wildlife and Parks (FWP) from the Upper Basin Pallid Sturgeon Workgroup to fund the purchase of a perpetual channel migration easement (CME) on 89.5 acres in Richland County along the Yellowstone River near Sidney, MT. The CME would ensure the exclusion of a variety of development actions on the land within the Channel Migration Zone (CMZ) with a primary purpose to disallow riverbank armorment, thereby allowing the river's natural form and function, protecting naturally functioning floodplains along the Yellowstone River, which sustain pallid sturgeon and other aquatic and terrestrial wildlife.

Montana Aquatic Resources Services (MARS), after entering into an agreement with FWP, located willing landowners, Gerald and Maryellen Navratil to develop said CME. MARS sought a third party to hold the easement; Montana Land Reliance (MLR) agreed to hold the channel migration easement with FWP retaining a third-party right of enforcement for the easement.

The project area is located about 4 miles south of Sidney, MT, along approximately 3,500 feet of the west bank of the Yellowstone River.

#### **Montana Environmental Policy Act**

Montana Fish, Wildlife & Parks is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of a proposed action to the human and physical environment. In compliance with MEPA, an Environmental Assessment (EA) was completed for the proposed project by FWP and released for public comment on January 11, 2016. Public comments on the proposed project were taken from January 11, 2016 through January 29, 2016.

A public hearing specific to this Environmental Assessment was held in Sidney, MT on January 27, 2016 where additional public comments were obtained.

In addition, the EA was mailed to 18 groups and individuals, advertised in local papers and posted on [www.fwp.mt.gov](http://www.fwp.mt.gov).

## **Summary of Public Comment**

Public comments were obtained primarily at the hearing held in Sidney on January 27, 2016. Additionally, three comments were received via email.

Comments fell into similar themes and will be addressed by topic:

- 1) “The EA indicates that 11 practices will be prohibited under the CME (Bank Stabilization, Subdivision, Mineral Extraction, Commercial Facilities, Dumping, Construction, Campers, Billboards, Roads, Utilities, Game, Fur or Fish Farms). It is highly unlikely that any of these practices, excluding bank stabilization, would occur anyway. Stabilization is cost prohibitive and therefore unlikely to occur. Why pay for the exclusion of these practices when they are unlikely to occur anyway”. (Sen. Rosendale)
  - a) Although the implementation of the above listed practices may seem to be irrelevant, or unlikely to occur, these types of actions are readily seen along the Yellowstone River both upstream and downstream of the proposed CME location. While some of the practices are rare (exp. Billboards, Mineral Extraction), others of these practices are quite common, including dumping, campers located along the river banks, construction, and most prevalent- bank stabilization. Current farm management practices implemented by the Navratil Family have not included the practices in questions to date. The CME will insure that the above listed practices of concern will not be allowed into the future, thus retaining the natural function of the river at this location and thereby providing the conservation benefits being sought for fish, wildlife, and river ecosystem health.
- 2) Taxes/Irrigation Fees: What happens to the taxes paid on the Navratil property if it is put under easement? Obligations to the Lower Yellowstone Irrigation Company?
  - a) Under a CME the property owners continue to operate their farm as previously done. All irrigation fees, taxes, or other costs associated with the farm operation continue to be the responsibility of the landowner. The only farm functions that are impacted by the CME are the 11 operational procedures listed in the EA that would impede natural river function and impact resource conservation values, none of which are related to the fiscal responsibilities of regular farm operations.
- 3) Are State or Federal funds being used to fund the CME? If so, it seems that the use of these funds to further this project are inappropriate. Funding the Navratils to “take no action” using State funds is inappropriate. Why fund the Navratils to “do nothing”?
  - a) Funding Source: Western Area Power Administration through the Upper Basin Pallid Sturgeon Work Group (UBWG) has provided the funds being used to complete the CME. WAPA funded the project as part of their interest in, and obligation to, addressing impacts related to pallid sturgeon recovery. WAPA funding is received through the sale of electrical power and is not

subject to FWP oversight. Montana FWP has been a long-term partner with WAPA through the UBWG in a variety of pallid sturgeon recovery efforts such as pallid sturgeon survey and inventory work, radio telemetry studies, etc. Funds allocated by WAPA to secure the CME are being processed through the existing funding infrastructure within FWP to MARS and MLR who have authored the CME. Other than limited staff time being allocated to the project, no FWP funds are associated with the project.

- b) Although a CME appears to fund the Navratil family to “do nothing” the 11 practices of concern listed in the EA are readily seen occurring on the Yellowstone River constitute a threat to natural river function and resource conservation values. The CME will assure that conservation values on this property are retained through natural river function into the future. The 11 conservation practices listed in the EA are currently being practiced by the Navratil Family, making this location a prime area to implement such a CME. Additionally, because the CME requirements will be tied to the land, these practices will continue into the future retaining said conservation values in the event of a change in land ownership.
- 4) Devaluation of Neighboring Lands: Concern that the implementation of the CME will reduce the value of neighboring lands was voiced.
- a) Although we understand the nature of this concern, current market values do not indicate that devaluation of adjacent lands would occur if the CME were finalized.
- 5) Impacts to Existing Ability to Irrigate Neighboring Farm Parcels: Concerns were voiced that the CME would eliminate the opportunity to protect an East-West lateral ditch (Figure 1) from potential loss to the river. The premise that the loss of this lateral ditch would impact the ability to flood irrigate up to 100 acres of ground was voiced.
- a) Investigations into the use of the E/W lateral indicated that use was discontinued in 1997 by the Navratil Family as a source of irrigation water for their properties (NRCS Correspondence- Email, Feb 3 2016). An on-site evaluation of this lateral was conducted February 5, 2016 with Mr. Don Stienbiesser (Leasee of the property in question) in attendance. This lateral is still being used by the Leasee to irrigate approximately 20 acres of the bottom portion of the field located north of the lateral (Figure 2). The NRCS indicated that the lateral is used to the red mark shown in Figure 2, the remaining ditch being used as a drain. The one-site investigation concluded that the lateral is used to carry water to the very end of the ditch where it is released and flows both North and East to irrigate the 20 acres outlined in Figure 2.
  - b) Correspondence from the US BOR indicated that the lateral was “Reclamation owned and managed by the Lower Yellowstone Irrigation Project”(BOR Correspondence – Email, Feb 3, 2016). This information seems to collaborate the findings of the NRCS that the lateral ditch may be used to the point

indicated on Figure 2. The onsite inspection showed that the lateral carries water to the end of the ditch and is needed to irrigate the lower 20 acres of the field. This being the case, the security of the lateral is necessary in order to continue farming operations on this portion of the field. According to the BOR correspondence, they and the LYIP would continue to participate in the operation of this lateral ditch.

- c) Investigations by MLR in preparation of the CME also indicates that the lateral ditch is used to irrigate the 20 acres north of the lateral. All other fields located downstream of the proposed CME and Navratil property obtain irrigation waters from the main canal or other laterals that are not associated with the CME.

The downstream leasee and LYIP expressed concerns that the CME will compromise their long-term ability to protect the lateral and farming operations. It does not appear that loss of the lateral is eminent, but channel migration westward has been occurring the past few years. The FWP Commission needs to consider these concerns in their deliberations. Correspondence from the BOR indicates that they and their manager (LYIP) would continue to participate in securing water delivery in the event of compromise to the lateral ditch. "If the river begins to migrate into the immediate area of that lateral we will likely have to do something to protect it to make sure deliveries are not impacted" (Email, BOR, Feb 3, 2016).

- 6) Future Ability to Lease/Farm the Navratil Property/ Fiscal Viability: Concerns were voiced by the current and past leasees that the implementation of the CME and the potential for loss of farm land because of the terms of the CME will impact their ability to raise crops on the Navratil property. If the land is allowed to be captured by the river the viability of leasing this property is reduced. (Pust, Staffanson)
  - a) Losses of the Navratil property to the Yellowstone River through erosion have reduced the property from approximately 300 acres to 230 acres over the course of the past 20+ years. Continued rates of loss to erosion are unknown. The Navratil Family have chosen to allow this natural river function to occur and by entering into the CME will ensure that this natural river function will continue into the future. Assuredly, these losses have historically impacted year to year farming practices and viability. Adjustments to farming practices to accommodate acreage loss over time will need to continue if additional acreage is lost under the terms of the CME. Leasees will need to evaluate their interest in, and viability of farming this property into the future under these conditions. This is a private business function between the Navratil Family and the leasee and is outside the authority of the proposed CME.
- 7) Relationship and Authority to the Endangered Pallid Sturgeon/Intake Project: With the funding source for the proposed CME being WAPA funds allocated to pallid sturgeon recovery efforts, there was some confusion that the development of this CME was related to concurrent pallid sturgeon recovery efforts located at the Intake Diversion Project. Pallid sturgeon recovery efforts at the Intake Diversion Project are authorized by the US Bureau of Reclamation's obligation to the US Fish and Wildlife

Service via the Threatened and Endangered Species Act. The proposed Navratil CME will benefit native Yellowstone River fishes including the pallid sturgeon but is not tied to any Federal authority over this T&E species. The use of WAPA funds to secure the proposed CME is the decision and discretion of WAPA and the UBWG partnered with MT FWP and its collaborating entities (MLR, MARS).

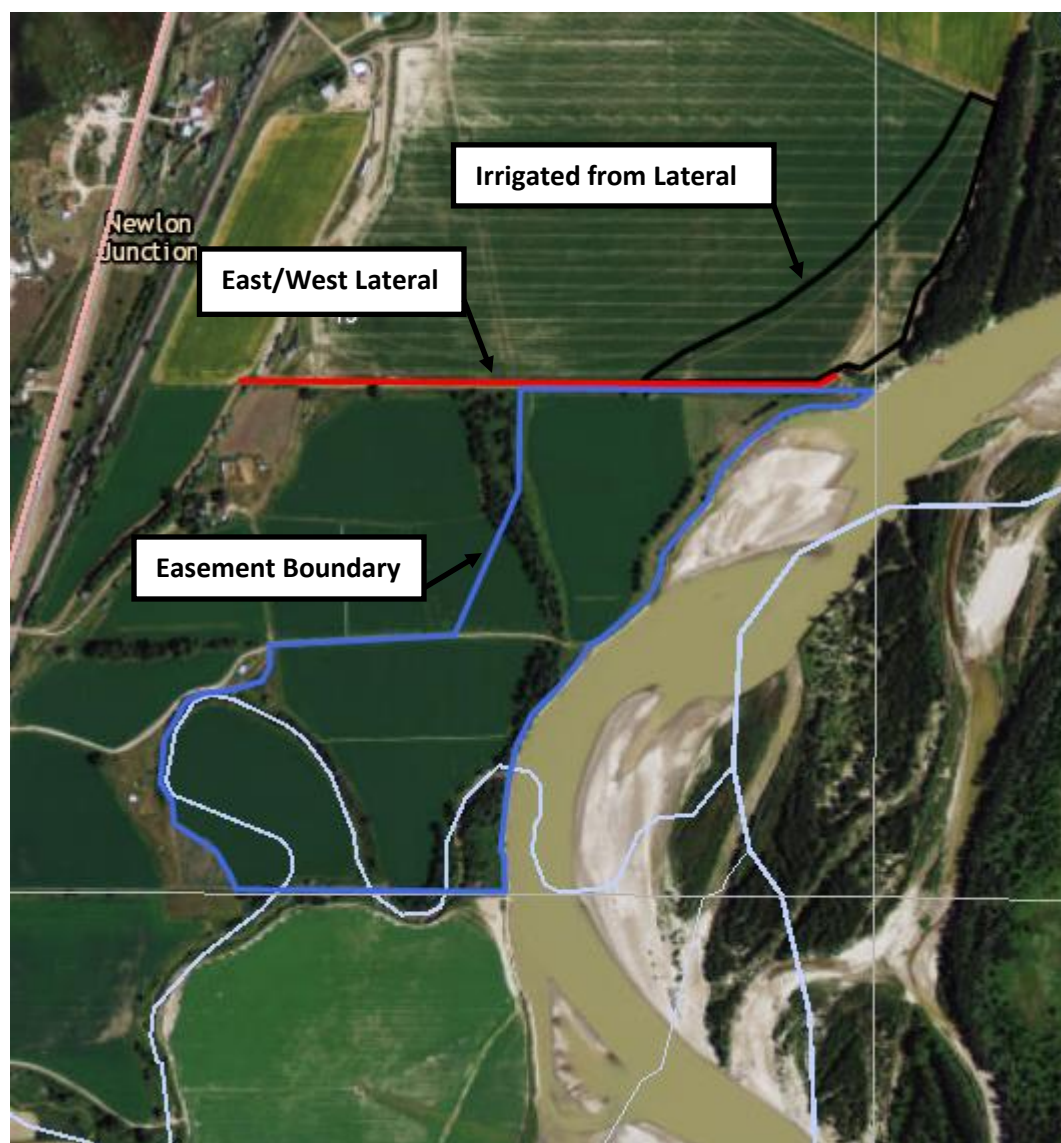
### **Decision**

The proposed CME is not without controversy and concern; it is my recommendation that the FWP Commission approve the CME contingent upon MARS and MLR addressing the downstream landowner and leasee's concerns that the CME will compromise the long-term ability to protect the lateral and future farming operations. If a compromise can be found, I would recommend to the FWP Commission that the proposed action to release WAPA funding for the purchase of a Channel Migration Easement from the Navratil Family be approved. If MARS and MLR are unable to reach agreement with the downstream landowner/leasee I would recommend executing the no-action alternative thereby removing FWP from the project.



Brad J. Schmitz  
Region 7 Fish & Wildlife Supervisor

February 8, 2016



**Figure 1. Overview of the Navratil property**



- 2015 Imagery - Esri, HERE, DeLorme, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA

Mike-

I talked with NRCS- In 1997 they did a big project w/ Jerry Navratil - & they agreed to quit irrigating past the red line - they seem to think that Stinkens may be flooding the area outlined in the red lines. NRCS thinks the lateral is only used to the point on the solid red mark - the rest is ~~undrain~~ the goes to the river. They don't think the lateral is used for an other acres on Grosvenor or

Ship

I have included some other maps to show how much land they have lost to the river.

2/3/2016

Figure 2. NRCS Correspondence and Map